



NSW Legislative Assembly Hansard

Fisheries Management Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 28 February 2006.

Second Reading

Mr TONY STEWART (Bankstown—Parliamentary Secretary) [8.45 p.m.], on behalf of Mr David Campbell: I move:

That this bill be now read a second time.

The Fisheries Management Amendment Bill makes a number of minor changes to the Fisheries Management Act 1994. Its primary focus is on improving administration of fisheries management, particularly in the areas of licensing, the issuing of endorsements, the levying of annual charges and contributions, and the reporting of fishing activity. The amendments build on those made in 2004 and represent subtle adjustments, where necessary, rather than broadscale changes. A key theme of the bill is to ensure consistency in administrative arrangements across the share management, restricted fishery and charter boat fishery frameworks, where possible.

Before I proceed to detail its key aspects, I emphasise that the bill contains a range of enabling or discretionary rather than directive provisions. It largely qualifies or extends existing regulation making powers and ensures consistency with provisions already enacted. Where new regulations, including share management plans and supporting plans, are required to give effect to the provisions of the bill, there will be a statutory consultation, and I anticipate this will occur in coming months. The majority of provisions relating to share management, restricted fisheries and recreational charter boat fishery will not be commenced until the regulations to which they refer have been drafted, consulted on and revised where necessary.

There are a number of management advisory committees and advisory councils established under the Fisheries Management Act that represent commercial and recreational fishing, conservation and Aboriginal interests in our commercial fisheries and the charter fishing boat industry. I can inform the House that the relevant management advisory committees were consulted on aspects of the bill and any issues raised have been carefully considered during drafting. The Seafood Industry Advisory Council was also consulted on the amendments in this bill, and members were given a briefing and update at their meeting in September last year. The Chairperson and Deputy Chairperson of the advisory council were also given an opportunity to review the detail of the bill. While there has been consultation on the bill, more significant consultation will follow this year as we work through the detail of the regulations.

I now turn to the specific amendments. First, I refer to those relating to the commercial fisheries management framework. Commercial fishing in New South Wales is now, in the main, managed under arrangements known as category 1 share management. Share management provides industry with ongoing security of access, encourages greater stewardship of the resource and enables more effective management. Under share management, fishing business owners are issued with tradeable shares and operate within the requirements of statutory fishery management plans. Fishing business owners have a major role in ensuring the future of their industry and are integral in developing the fishery management plans.

Many of the amendments to the Fisheries Management Act facilitate the final stage of share management for our key commercial fisheries—that is, the implementation of share management plans and the issue of final shares in 2006-07. A commercial fishing licence authorises a person to take fish for sale in New South Wales. However, in restricted fisheries and share management fisheries, fishing activity can occur only in accordance with an endorsement. An endorsement is a form of statutory authorisation that allows a fisher to participate in a specific fishery, to use a certain type of fishing gear, harvest a particular species or fish in a specific region.

Several provisions within the bill relate to the issue and holding of endorsements, the ability to revoke, vary or add conditions attached to an endorsement, and the recording of particulars of endorsement in the share register. Items [9] and [13] of schedule 1 to the bill relate to the holding of endorsements by shareholders or their nominated commercial fisher. Endorsements are currently listed on each individual's commercial fishing licence and the historic system for changing endorsements between the shareholder and their nominees is bureaucratic and cumbersome. It requires a licence to be returned to the department, amended and reissued.

The share management plan regulations currently under development will provide a more flexible system for changing endorsement holders. Endorsements will be removed from individual fishing licences and placed on a card. Subject to any requirements in the management plan for a fishery, a licensed commercial fisher in possession of the card would be taken to hold the endorsement and be able to take fish for sale in accordance with the statutory management plan or other relevant instrument. The management plans will positively specify

the circumstances in which shareholders can hold endorsements or nominate others within and across fisheries. The purpose is to ensure that there can be no dispute as to which fishing business a commercial fisher is operating on behalf of at any point in time. This is significant in terms of ensuring compliance with fishery rules, and particularly so when serious breaches in subsequent convictions could result in a loss of access to the fishery.

Items [11], [14] and [21] relate to conditions of endorsement in share management and restricted fisheries. Endorsements are already subject to conditions, as listed on each commercial fishing licence. These conditions reflect subtle management differences between endorsements authorising different activities, such as the use of nets or traps or the taking of certain fish species generally to reflect local conditions. A similar cumbersome process applies to changing conditions as applies to changing endorsement holders. For this reason, when they are required, endorsement conditions will be prescribed in share management plans. However, in limited circumstances an endorsement condition may need to be implemented immediately by notice in writing pending the necessary regulatory change. The new provisions in relation to endorsement conditions mirror those that already apply to conditions on commercial fishing licences under section 104 of the Act and on charter boat fishing licences under section 127C. Accordingly, an equivalent penalty of 100 penalty units applies to a contravention on an endorsement condition.

I now turn to the provisions relating to management charges and annual contributions. I must stress that this bill does not increase revenue collected via charges and contributions from those already subject to them, nor does it set the amount of any future charges or introduce new charges over and above those already in place. The Government is aware that the commercial fishing industry, like other primary industries, is under considerable financial pressure as a result of the drought, rising fuel costs and fluctuating market prices as well as longstanding structural problems. It is further acknowledged that some businesses are finding it difficult to pay the annual charges that help to support the sustainable management of their industry.

In the past 12 months the Government has assisted in relieving financial pressure on industry in a number of ways. In 2004-05 the fishery monitoring charge, a contribution to a monitoring program required by the environmental approvals issued under New South Wales and Commonwealth laws, was waived, saving the industry about \$400,000. A new method for calculating the abalone community contribution, previously set at 6 per cent of the gross value of the fishery, has been introduced, passing a considerable saving to industry. The community contribution for the lobster fishery has been set at \$112 per shareholder until 2008 instead of being calculated based on 6 per cent of gross value of the fishery. The annual lobster management charge has also been reduced.

Nevertheless, in a commercial environment it is only fair that all business owners pay their share of management costs. The department has given industry members additional time to pay their 2005-06 charges without any penalties and boat operators with legitimate financial difficulties will be treated fairly in line with government financial policies. The peak industry body, the Seafood Industry Advisory Council, has formed a number of working groups to help it focus on the key issues facing the industry. Amongst these are structural adjustments to help ensure the future viability of the industry, and the pricing and charging of industry for a range of government services. In the meantime, the bill makes sensible, practical and important changes to progress the shift from charging commercial fishing licence holders to charging fishing business owners as the owners of those statutory rights.

Firstly, the bill ensures that management charges and annual contributions are to be paid by the fishing business owners, the owners of shares and restricted fisheries endorsements rather than the licensed commercial fisher who fish under them and who, in some cases, are merely employees. Secondly, the bill, through item [17], requires payment of the management charge and annual contributions irrespective of whether the fishing business owner chooses actively to fish or to hold their endorsement in abeyance. Regardless of whether a fishing business or its endorsements are active, the owner holds saleable property rights and receives a benefit from activities such as management, research and compliance, which are funded by the charges and contributions. The existing provisions are inequitable because the full-time operators subsidise those who choose not to activate their business but could do so at any time, subsequently benefiting from any new management initiatives. This form of free riding encourages latent effort, which is acknowledged as a major problem in the industry.

Item [18] provides flexibility in the way the management charges are structured. It enables a single management charge to be payable for more than one share management fishery and for a single management charge to apply to a single fishing business, subject to the management plan adopting such provisions. This approach is consistent with the Government's position as indicated during the second reading speech relating to the 2004 Fisheries Management Act amendments—that is, the charging system should not penalise fishers for being diversified and, in fact, it should be capable of being structured so as to foster diversification. Item [20] repeals the existing provisions requiring payment of an annual contribution by commercial fishing licence holders, as opposed to business owners, under section 106. Commercial fishing licence holders will continue to pay licence fees. However, the costs of management, research and compliance will shift increasingly to owners of the property rights in the future.

Item [22] introduces an annual contribution payable in restricted fisheries, while item [26] introduces an equivalent annual contribution payable by the holders of charter boat fishing licences. Let me be clear that the annual contributions for restricted fisheries and the charter boat fishery will replace existing endorsements and activity-based charges. They will not be additional charges. Members will note that the bill reinforces that annual contributions are payable towards specific industry costs consistent with existing statutory provisions governing expenditure from the Commercial Fishing Trust Fund and Charter Fishing Trust Fund. Put simply, the bill makes it clear that revenue can only be collected for the purpose for which it can lawfully be spent.

A further amendment via item [16] corrects a drafting oversight related to the Commercial Fishing Trust Fund. Mandatory share forfeiture for non-payment of charges is a last resort and applies once all the normal debt recovery procedures have been exhausted. The sale of shares by public tender to recover outstanding charges has had limited application to date, but is a necessary instrument to safeguard revenue for effective management of our commercial fisheries. With the exception of the community contribution, all of the charges levied on shareholders are payable directly to the Commercial Fishing Trust Fund, as required under section 236 of the Act.

Erroneously, the original legislation overlooked this fact by requiring all revenue from the sale of forfeited shares to be paid only to the Consolidated Fund, even where shares have been forfeited to recover an outstanding amount that, had it been paid in the normal course, would have been paid into the Commercial Fishing Trust Fund and used for management purposes. As is appropriate, the amendments enable the Commercial Fishing Trust Fund to be credited following the sale of shares to recover outstanding amounts, excluding the community contribution.

I now turn to the amendments regarding the making, keeping and submission of fishing activity records. Commercial fishers and charter boat operators are already obliged to submit records on the quantity and species of fish harvested, the fishing methods and boats used. This generally occurs on a monthly basis, with some commercial catch data spanning over 50 years. The records provide a vital data source, which, along with other independent information, assists in the monitoring of our fish stocks and assists decision making. Fishing business and charter fishing boat owners therefore have an interest in providing accurate and timely records to the department.

Items [23], [24], [25] and [27] amend provisions relating to the making, keeping and submission of fishing activity records in the commercial and charter boat fisheries. Records confirming nil fishing activity or fishing activity that did not result in any catch are equally important as records of catch and are now specifically provided for in the legislation. These records can provide important information on stock availability. As with the other substantive provisions of this bill, the detail will be contained in the regulations. I can confirm that the regulations will not require submission of records by both commercial fishers or masters and fishing businesses. This would be unnecessary duplication. Rather, the principle is that the fishing business owners or charter fishing licence holder owners would be normally required to submit records to the director general in respect of their business. There may be some exceptions, for example in quota managed fisheries where this would be impractical.

Importantly, a commercial fisher or charter fishing master who fails to provide relevant information to their fishing employer will be committing an offence, as will the employer, if they fail to make and submit a record of fishing activity. The penalties have not changed. The bill also adopts consistent provisions with respect to the making, keeping and submitting of fish receiver records. Due to privacy legislation, catch records prepared by a nominated fisher or employed charter boat master cannot currently be released to the fishing business owner without their permission. While the future reporting requirements as just outlined will address this issue, further amendments are necessary to deal with access to historic information. Fishing business owners have a legitimate interest in knowing how much catch their business has generated, especially if they are considering selling or refinancing. Item [29] of the bill allows fishing business and charter fishing boat owners access to records prepared in relation to their business.

I will now deal with the balance of the provisions in the bill. A Share Appeal Panel has been established to hear appeals relating to the provisional issue of shares in the new category 1 fisheries. Item [35] introduces important amendments to the savings provisions relating to the Share Appeal Panel. These amendments are necessary to remove ambiguity as to the matters the panel is to hear to safeguard the intent of the original savings provisions and to ensure the appeals are efficiently and fairly dealt with.

When the Fisheries Management Act was passed in 1994 it was intended that each fishery would move directly from open access arrangements to a share management framework. Appropriately, the original share appeal provisions of the Act envisaged appeals to the Share Appeal Panel relating to catch history, a key component of the proposed share allocation criteria. During its first term, this Government, on the advice of industry implemented a restricted fishery framework, which relied largely on catch history to allocate endorsements.

A comprehensive and independent review process followed the issue of restricted fishery endorsements in 1997. It involved assessment of over 800 appeals by an independent panel established under the regulations

between 1997 and 2000. Where appellants were not satisfied with the outcome of their restricted fisheries review they were able to appeal the decision to the Administrative Decisions Tribunal, as was their right under section 126 of the Fisheries Management Act.

When the category 2 share management framework was incorporated into the Act in 2000 the significance of the comprehensive restricted fishery review process was not overlooked. Savings provisions were inserted into the Act to specifically exclude appeals to the Share Appeal Panel relating to the eligibility for restricted fishery endorsements and validated catch history where these could have been subject to a review request through that process. It was clear that restricted fishery matters were not intended to be reopened via the share appeal process and accordingly the existing savings provisions direct the panel to refuse to hear any such matter. However, the conversion from category 2 to category 1 fisheries in March 2004 has led to some ambiguity as to the application of the savings provisions as originally intended.

While the amendments may appear to be a significant redraft, they do not go beyond what was originally intended. They clarify the matters for which there is no appeal. They ensure the panel is not required to revisit matters that have already been exhaustively examined. This includes matters dealt with by earlier internal reviews and review panels over the past 10 years and which could have been the subject of appeals to the Administrative Decisions Tribunal. As to current appeals that have been lodged with the Share Appeal Panel, of 1,257 fishing businesses, only 88 share appeal applications were received with respect to the allocation of provisional shares. This figure signals that the vast majority of applicants felt their shares had been correctly allocated and that catch history had indeed been already finalised. Importantly, these amendments will be commenced shortly after assent so that the Share Appeal Panel can proceed with the appeal hearings and complete the process without further delay or undue expense.

The independent Total Allowable Catch Setting and Review Committee makes determinations on harvest levels for specified species by commercial fishers, currently abalone and rock lobster. At the moment, the committee is required to call for public submissions before it makes or reviews a determination. Even if the review itself takes place soon after the original determination, a second call for submissions is required. The determinations usually relate to a one-year period and the existing requirement for a second round of submissions can result in undue delays and uncertainty as to the total allowable catch. The bill gives the committee some discretion as to whether a second round of public submissions is necessary but, nevertheless, ensures that the committee is to have regard to earlier submissions.

Item [33] makes a small change to the description of the ocean trawl fishery to provide for the use of a Danish seine trawl net. This legitimate fishing gear is used by a small number of commercial fishers and its use has been considered in the environmental impact statement and draft fishery management strategy for the ocean trawl fishery. The final amendment concerns the issue of permits for fish auctions for charitable purposes. Honourable members may be aware of the revenue these fish auctions provide to assist charities. Advice received indicates that an amendment of the section of the Act dealing with the issue of permits is required to allow for fish auctions. The issue of specific permits for this purpose is provided by item [5]. Implementation of these provisions will be subject to any advice arising from the recent bag and size limits review paper and from the New South Wales Food Authority.

It is already a specific permit condition that the permit holder must notify the Food Authority and the local fisheries office before undertaking a fish auction. Other permit conditions include that any fish caught must be kept on ice, the fish is suited for human consumption and that appropriate records are also kept for the fish sold at the auction. This bill covers some ground. The changes are not being made just for the sake of it, but to provide a fairer, more consistent and a much more efficient approach to the regulation of fishing activities. Overall, the aim of this bill is to make the Fisheries Management Act more efficient from an administrative and operational point of view. I strongly commend this bill to the House.